

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

DAVID D. NUYEN

:

: **Criminal No:** DKC-2001-0134 (D.MD)

: **Criminal No:** DKC-2001-0370 (D.MD)

: **Criminal No:** _____ (D.D.C)

:

: **Violations:**

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: **18 U.S.C. § 1505 (Obstruction)**

: **18 U.S.C. § 1001 (False Statements)**

: **15 U.S.C. § 2615(b) (Toxic Substances**

: **Control Act)**

: **42 U.S.C. § 4852d (Lead Hazard**

: **Reduction Act**

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JOINT FACTUAL STATEMENT

The defendant, David D. Nuyen, is a landlord who owned and/or managed approximately 15 low-income rental properties in the District of Columbia and in Maryland. As set forth in the pending Indictment and this Joint Factual Statement, David Nuyen was the owner and manager of the following corporations and business entities, all doing business at 3321 Toledo Terrace, Hyattsville, Maryland, and which owned and/or managed the rental properties in the District of Columbia and Maryland: General Promotion Technology, Inc.; GPT Realty (also known as David Nuyen d/b/a GPT Realty); Mortgage USA; USA Home Champion Realty and the David Nuyen Revocable Trust. The defendant also was a licensed real estate broker in Maryland, the District of Columbia and Virginia.

As set forth in the related plea agreement and detailed herein, the defendant is pleading guilty and admitting his guilt to three sets of charges:

1. Defendant Nuyen is pleading guilty to Counts 1, 3, 4, 7, and 9 of the pending Indictment in the District of Maryland, Criminal Case No. DKC-2001-0134, charging obstruction of an agency proceeding being conducted by the Department of Housing and Urban Development (“HUD”) regarding the defendant’s compliance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d (“Lead Hazard Reduction Act”), and representative substantive counts of making and using materially false lead paint disclosure forms that are required under the Lead

Hazard Reduction Act, in violation of 18 U.S.C. § 1001;

2. Defendant Nuyen also is pleading guilty to a newly filed Criminal Information in the District of Maryland charging him with making a materially false statement to HUD in an Application for Approval to become a federally insured loan originator as part of scheme to commit mortgage fraud, in violation of 18 U.S.C. § 1001; and
3. Defendant Nuyen also is pleading guilty to a newly filed Criminal Information in the District of Columbia charging him with a criminal violation of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d (“Lead Hazard Reduction Act”), as enforced by the Toxic Substances Control Act, 15 U.S.C. § 2615, for failing to notify a tenant of lead-based paint hazards.

BACKGROUND

Under the Lead Hazard Reduction Act, and implementing Real Estate Notification and Disclosure Rule, the Congress required landlords of target housing (buildings built before 1978) to provide prospective tenants with notice and disclosure of the presence of lead-based paint and associated hazards before becoming obligated to a lease. Effective September 6, 1996, for owners of four or more residential rental properties, each contract to lease target housing built before 1978 must include, as an attachment or within the contract, the following elements:

- ! A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.
- ! A statement by the landlord disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.
- ! A list of any records or reports provided to the tenant or an indication that no records or reports are available.
- ! A statement by the tenant affirming receipt of a lead hazard information pamphlet approved by the Environmental Protection Agency, entitled “Protect Your Family from Lead in Your Home,” which alerts tenants of the dangers of lead paint and measures to

reduce risk of lead poisoning and of the landlord's disclosure of any known lead-based paint and/or known lead-based paint hazards.

OBSTRUCTION, FALSE STATEMENTS & LEAD HAZARD ACT VIOLATIONS

In September 1998, defendant Nuyen was contacted by HUD as part of a pro-active civil enforcement initiative undertaken in coordination with the United States Department of Justice ("DOJ"). The initiative was designed to determine compliance with the provision of the Lead Hazard Reduction Act. Nuyen was selected for a file inspection because his name appeared on the list with the most housing code violations, prepared by the District of Columbia's Department of Consumer and Regulatory Affairs, and the list of landlords with multiple cases of lead poisoned children (children with elevated blood levels of lead) prepared by the District of Columbia Department of Health. Under the Lead Hazard Reduction Act landlords must document their compliance by keeping tenant signatures on file, using a standard lead paint disclosure form ("LPDF").

On September 9, 1998, Nuyen greeted representatives of HUD and DOJ's Environmental Enforcement Section at his office in Hyattsville, MD, and brought them into a conference room where he presented his files for inspection. No lead paint disclosure forms were present in the files and Nuyen was unable to produce any forms documenting his compliance with the law when asked.

HUD sent a follow-up letter on or about October 14, 1998 which requested any lead paint disclosure forms. When Nuyen was contacted by telephone he indicated that he now had documents available at his office in Hyattsville, Maryland.

On November 2, 1998, HUD representatives from the Office of the General Counsel and HUD Office of Lead Hazard Control again visited Nuyen at his office in Hyattsville. Nuyen again voluntarily presented his tenant files in a conference room, but this time there was a separate blue folder marked "Lead Paint Doc's" that contained lead paint disclosure forms for hundreds of rental units at apartment buildings owned and managed by Nuyen. In a subsequent meeting, Nuyen explained that the reason he did not have the lead paint information on September 9, 1998, was that it was kept by resident property managers.

In fact, Nuyen's tenants did not receive the required lead hazard warning, even in those instances where Nuyen had received notices of violation from the District of Columbia that an apartment was found to have dangerous levels of lead. Nuyen knew that he didn't have the required records to demonstrate his compliance with the Lead Hazard Reduction Act when first approached by HUD. Nuyen deliberately submitted to HUD backdated lead paint disclosure forms containing false, fictitious and fraudulent statements designed to conceal his violation of the law.

- ! Nuyen backdated his signature and his tenants' signatures on lead paint disclosure forms and thereby falsely represented that he signed and distributed the forms and gave

tenants all available records and reports pertaining to lead-based paint and lead-based paint hazards in the housing at an earlier date;

- ! Nuyen presented HUD with forms that falsely represented that he had given tenants “How to Protect Your Family from Lead,” a required EPA approved pamphlet;
- ! Nuyen suggested to resident building managers that tenants sign and backdate lead paint disclosure forms by putting the tenants’ move-in date on the form, rather than the date on which the tenant actually received the lead notice and signed the form;
- ! Nuyen gave HUD lead paint disclosure forms without revealing that he knew some tenant signatures were not signed by the tenants, but rather, had actually been written by resident building managers employed by Nuyen; and
- ! Nuyen gave lead hazard notification forms to HUD representing that he told tenants he had no specific information of lead-based paint and lead-based paint hazards for apartments at 4120 14th Street NW in Washington DC, although Nuyen had been issued deficiency notices by the District of Columbia warning that lead hazards had been found in certain apartments there and he had been told by his resident building manager that a child living there had been found to have an elevated blood level of lead.

The backdating of the lead paint disclosure forms made it appear that in many instances Nuyen had given the required warnings in 1997, shortly after the Lead Hazard Reduction Act had become effective. In fact, neither Nuyen’s resident managers or the tenants received the lead paint disclosure form or the required educational pamphlet until after HUD’s visit in September 1998. Each of the lead paint disclosure forms submitted to HUD that form the basis of Counts 1, 3, 4, 7 and 9 contains a false landlord signature date and a false tenant signature date. Nuyen knew at the time these forms were presented to HUD that the dates were false. With respect to Count 9 of the Indictment, relating to the lead paint disclosure form for Apartment #34 at 4120 14th Street, N.W., Washington, D.C., Nuyen also had received housing deficiency notices from the District of Columbia advising of the presence of actual lead-based paint and lead-based paint hazards. Each lead paint disclosure form contained a “Certification of Accuracy” directly above the signature line which reads: “The undersigned have reviewed the information above and certify that to the best of their knowledge the information they have provided is true and accurate.” The defendant knew at the time that the information he provided was not true or accurate.

Nuyen engaged in various deceptive practices designed to conceal the fact that he backdated many of the tenant signatures. In many instances, he entered the date next to his own signature with slash marks such as “1/1/97” but then entered the date next to the tenant’s signature with dash marks such as “1-1-97.” In some instances he changed ink color to match the color used on the tenant’s

signature or made the tenant and landlord dates slightly different to make the forms appear genuine (e.g., 1/1/97 vs. 1/10/97). In other instances, where the tenant had actually signed and dated the form, Nuyen changed the date to coincide with the tenant's lease. This was necessary because some tenants had put the real date they signed the form only days before HUD's file re-inspection on November 2, 1998 or because the tenant had put the date they had moved into the property (as instructed) but it was before the Lead Hazard Reduction Act had gone into effect. One of Nuyen's resident managers told Nuyen that he signed some of the tenant signatures on the forms. Nuyen failed to disclose this fact to HUD when he presented the forms to HUD.

Nuyen knew of his obligations under the Lead Hazard Reduction Act. By virtue of being a licensed realtor, Nuyen was required to take continuing education classes which specifically informed him of the requirements of the Lead Hazard Reduction Act and implementing regulations. In order to obtain the renewal of his broker's license in Maryland, Nuyen had to certify that he had taken such a course. Indeed, Nuyen attended an 15 hour legal update class on May 18, 1997, taught by the Ed Smith Real Estate School in Maryland that included specific course instruction on lead paint hazards and the lead notification requirements. Similarly, as a pre-requisite to renewing his real estate broker's license in Virginia, Nuyen attended an accredited 8 hour continuing education class on July 6, 1998, taught by the Northern Virginia Association of Realtors that included the requirements of the Lead Hazard Reduction Act in the course materials.

On May 4, 1999, the Department of Justice Environmental Enforcement Section and HUD jointly sent a letter to Nuyen and his various companies notifying him that they intended to file a civil lawsuit in U.S. District Court. The letter stated that based upon the information provided by Nuyen to HUD in November 1998, the United States had identified 202 units with one or more violations of the Lead Hazard Reduction Act at eleven different properties. The DOJ/HUD letter offered Nuyen an opportunity to settle in advance of the filing of the lawsuit. Nuyen eventually responded and a settlement meeting was held on July 21, 1999. Nuyen appeared without counsel and stated he did not need counsel since he was in compliance with the law. Nuyen stated that he was aware of the requirements of the Lead Hazard Reduction Act by virtue of being a licensed broker in Maryland, the District of Columbia and Virginia. Nuyen falsely stated to those present that he had been complying with the lead disclosure requirement since 1996. Asked how he could explain having lead paint disclosure forms on November 2, 1998, when he had none on September 9, 1998, Nuyen falsely responded that the reason was that the files had then been in the possession of his resident building managers. Additionally, Nuyen stated that the reason that some of the signatures on the forms are dated after HUD's visit was that some of the tenants, such as Hispanic tenants, did not sign the form when they got the information from him in 1996, but that they signed recently after he told them he was in trouble. In truth, none of the tenants living in his properties had been properly notified about possible and actual lead paint hazards until after HUD's first inspection of his files on September 9, 1998.

On March 15, 2000, Special Agents with the HUD Office of Inspector General, the EPA -

Criminal Investigation Division, and the Federal Bureau of Investigations executed a search warrant on Nuyen's business offices in Hyattsville, MD. There they obtained the original tenant files, including files not provided to HUD. Nuyen was interviewed that day and told the agents he had been notifying tenants about lead hazards since the law took effect. He also indicated that he was aware that a child at one of his buildings had been found to have elevated levels of lead in the blood from eating lead paint. Nuyen's tenant files contained false and backdated lead paint disclosure forms for the following buildings owned and/or managed by the defendant:

- ! 5611 5th Street, N.W, Washington, D.C.
- ! 5024 9th Street, NW, Washington, D.C.
- ! 1125 12th Street, NW, Washington, D.C.
- ! 4120 14th Street, NW, Washington, D.C.
- ! 906 Gallatin Street, NW, Washington, DC
- ! 506 Longfellow Street, NW, Washington, D.C.
- ! 1814 Q Street, SE, Washington, D.C.
- ! 1388 Tewkesbury Place, NW, Washington, D.C.
- ! 1430 Tuckerman, Street, NW, Washington, D.C.
- ! 1655 W Street, SE, Washington, D.C.
- ! 1659 W Street, SE, Washington, D.C.
- ! 101 41st Street, NE, Washington, D.C.

During the search of Nuyen's files pursuant to the warrant, federal agents found housing deficiency notices from the District of Columbia dating back to 1995 informing him that lead hazards had been found in apartments 34 and 46 at 4120 14th Street, N.W., Washington, D.C. The notices stated that lead based paint had been found in a quantity sufficient to constitute a hazard to the health of an inhabitant of the premises or of a visitor to the apartment under the age of eight years old. The apartment building at 4120 14th Street, N.W. was owned by General Promotional Technologies, Inc., which in turn was owned by Nuyen; the building was managed by GPT Realty, which was also owned by Nuyen.

At least two District of Columbia lead inspectors would testify that they had conversations with Nuyen between 1995 and 1997 advising him that their inspections were triggered by medical tests which had found elevated blood levels of lead in children residing at the building. These lead inspectors told Nuyen that dust and paint samples had been taken and that the analyses of the samples had found significant lead-based paint hazards that required abatement. In one case, a tenant with a child with elevated levels of lead was moved from one apartment (#46) to another apartment (#34) at the 14th Street apartment building. Nuyen was aware of this move and the reason. The family was not told that Apartment #34, where the family was moved, also was known to contain lead-based paint. When Apartment # 34 was tested by the EPA, after the family was moved in, as part of this criminal investigation in April 2000, it was found to have high levels of lead (e.g., 5250 parts per million lead under a kitchen window sill). When Apartment #46 was tested by the EPA in June 2000, it was found

to have high levels of lead (e.g., 39,000 parts per million lead on a bedroom window sill). On the lead paint disclosure forms presented to tenants and submitted to HUD, Nuyen checked a box on each form – including Apartment #34 at 14th Street – stating “Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing” even though he had received notice from the District of Columbia of the presence of lead based paint and/or lead-based paint hazards.

The representative charge contained in the Criminal Information in the District of Columbia is based upon the fact Nuyen knowingly violated the Lead Hazard Reduction Act by failing to provide a new tenant in Apartment #33, 4120 14th Street, N.W., in 1998 with a lead warning statement or the required EPA lead hazard pamphlet about how to minimize the health dangers posed by deteriorating lead paint. The form for this apartment was backdated by Nuyen to September 1, 1998, prior to HUD’s initial inspection on September 9, 1998. When interviewed by HUD and EPA in June 2000, the tenant indicated that the signature on the lead paint form submitted to HUD was not his signature, and that he had not received a lead paint disclosure form or lead hazard pamphlet.

During the course of the criminal investigation into his obstruction of HUD’s enforcement proceeding, Nuyen engaged in several types of additional obstructive behavior as summarized below.

First, in the summer of 2000, Nuyen distributed an affidavit to tenants asking them to swear “under the penalties of perjury” that they had received a lead paint disclosure form and had been provided with the EPA pamphlet when they first signed the lease for the apartment. The text of the affidavits differed and some actually asked the tenants to swear that they had received the lead paint disclosure form and EPA pamphlet “in late 1996.” In fact, however, none of the tenants had actually received the disclosures in 1996. As filled out by the tenants, Nuyen knew many of the affidavits were false. Nuyen also knew that a number of the tenants could not read or understand the affidavit.

Second, Nuyen testified before the Grand Jury in Greenbelt, MD, on two occasions at his request. On both occasions Nuyen committed perjury by lying to the grand jury while under oath. In particular, Nuyen claimed that his backdating of the forms was merely to document notification the lead hazard disclosure he believed his resident property managers gave to tenants when they first moved in to their apartments, but for which records had not been kept. The defendant admits that he knew this testimony was false at the time and that he had no basis to believe that the resident managers provided such notice. Nuyen stated that he thought the Lead Hazard Reduction Act was “trivial” and was not being enforced.

MORTGAGE FRAUD

Nuyen was also the subject of a separate investigation in the District of Maryland concerning allegations that he falsified verifications of bank deposits and employment records for mortgage applicants for commercial and federally insured loans. The Criminal Information in the District of Maryland charges that Nuyen made a materially false statement on a written form dated January 7,

2000, that was submitted to HUD as part of Nuyen's effort to become a loan originator. The form – "Application for Approval FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer" – required Nuyen to answer 7 specific questions about his history and business status. The form explained that if any of the answers was "Yes", then a written explanation was required on a separate sheet of paper. Nuyen answered "No" to question 6 which asked: "Is the applicant currently subject to regulatory or supervisory action by any regulatory agency? Regulatory actions include, but are not limited to, supervisory agreements, cease and desist orders, notices of determination, a memorandum of understanding, unresolved audits or investigations." At the time, Nuyen knew and deliberately failed to disclose material information that HUD was conducting an investigation regarding his compliance with the Lead Hazard Reduction Act and that DOJ planned to file a civil lawsuit against him.

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I have read this Joint Factual Statement and carefully reviewed every part of it with my attorneys. I agree that it is a true and accurate statement of facts.

Date

David D. Nuyen

We are Mr. Nuyen's attorneys. We have carefully reviewed this Joint Factual Statement with our client.

Date

James H. Rodio, Attorney for the Defendant

Date

Steven D. Gordon, Attorney for the Defendant